

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

RUFINO A. VILLARREAL,)
)
Plaintiff,) 8:06CV0021
)
vs.) ORDER
)
F. GERARD HEINAUER,)
)
Defendant.)

Before me is filing no. 2, the motion to proceed in forma pauperis ("IFP") filed by the pro se plaintiff. Upon review of the plaintiff's papers, I shall grant the plaintiff leave to proceed IFP.

ADMONITIONS

The plaintiff is informed that the court can later enter an order taxing costs in this case. No one, including the plaintiff, is relieved by this order from the obligation to pay or to reimburse taxable costs after this action is over.

In addition, even after a motion to proceed IFP has been granted, the court may still revoke IFP status and dismiss a complaint under 28 U.S.C. § 1915(e)(2)(B) if the court finds that the complaint is frivolous or malicious. Kane v. Lancaster Co. Dep't of Corrections, 960 F. Supp. 219, 222 (D. Neb. 1997). To determine that a claim is frivolous, the court must find that the claim is based on an indisputably meritless legal theory or that factual contentions are clearly baseless. Id.

INITIAL REVIEW

The complaint is now subject to initial review pursuant to 28 U.S.C. § 1915(e)(2)(B)(i). When presented with an IFP complaint filed by a nonprisoner, the court is "limited, in terms of sua sponte initial review, to deciding whether the plaintiff's complaint is frivolous or malicious." Id. Construed liberally, I do not find that the complaint is frivolous or malicious. See Bracken v. Dormire, 247 F.3d 699, 702-03 (8th Cir. 2001) ("it is our longstanding practice to construe pro se pleadings liberally").

SUMMONS FORMS

It is now time for service of process on the defendants. Fed. R. Civ. P. 4 requires service of the complaint upon each defendant within 120 days of filing the complaint. Rule 4 provides that if service of the summons and complaint is not made within 120 days after filing of the complaint, the court shall dismiss the action or direct that service be effected within a specified time.

THEREFORE, IT IS ORDERED:

1. That filing no. 2, the plaintiff's motion to proceed in forma pauperis, is granted, subject to the admonitions stated above in this Order.

2. The Clerk of Court shall provide the plaintiff with a summons form for each named defendant, together with Form 285 and a copy of this order.

3. The plaintiff shall, as soon as possible, provide the Clerk with the completed summons forms and completed Form 285. **In the absence of these forms, service of process cannot occur.**

4. Upon receipt of the completed summons forms and Form 285, the Clerk shall sign the summons forms and forward them, together with a copy of the complaint, to the U.S. Marshal for service on the defendants.

5. The Marshal shall serve the summons and complaint on the defendants, without payment of costs or fees. Service may be effected by mail pursuant to Fed. R. Civ. P. 4(e)(1) and Neb. Rev. Stat. § 25-505.01(c).

6. The plaintiff is hereby notified that failure to obtain service on a defendant within 120 days from the filing of the complaint, as provided by Fed. R. Civ. P. 4, may result in dismissal of this matter without further notice, as against that defendant. (The U.S. Marshal's Service typically requires at least two weeks to complete service after receiving the service of process documents.)

7. The Clerk is hereby directed to create a case management deadline and to bring this matter to the attention of the court if service has not been obtained upon any defendant by expiration of the 120 days.

8. After an appearance has been filed by a defendant, the plaintiff shall serve upon that defendant or, if an appearance has been entered by counsel, upon such counsel, a copy of every future pleading, letter or other document submitted to the court. Litigants in this district usually serve copies of motions and other documents on adverse parties by first class mail, postage prepaid. The plaintiff shall include with each original document submitted to the court a "**Certificate of Service**" stating the date a true and correct copy of such document was mailed to each defendant or the attorney of a represented defendant. It is a violation of the rules of court to send communications to the court without serving a copy on the other parties to the case.

9. After receipt of the summons, each defendant shall file responsive pleadings or motions within the time allowed by Rule 12 of the Federal Rules of Civil Procedure.

10. The plaintiff shall keep the court informed of the plaintiff's current address at all times while this case is pending.

11. The plaintiff is advised that he is bound by the Federal Rules of Civil Procedure and by the Local Rules of this court in the prosecution of this case. The federal rules are available at any law library, and the local rules are available at the office of the Clerk of Court, and also on the court's web site at www.ned.uscourts.gov.

12. This order is entered without prejudice to the court later entering an order taxing costs in this case. No one, including the plaintiff, is relieved by this order from the obligation to pay or to reimburse taxable costs after this action is over.

13. The plaintiff shall review the **Instructions** for completing summons and 285 Forms attached to this Order and shall save the Instructions for use in completing the forms when received from the Clerk of Court.

DATED this 16th day of February, 2006.

BY THE COURT:

S/ F. A. Gossett
United States Magistrate Judge

INSTRUCTIONS: SUMMONS FORMS - PRO SE PLAINTIFFS - IFP [w/ IR]

- 1. YOU MUST USE A SEPARATE SUMMONS FORM FOR EACH DEFENDANT.**
- 2. ALTHOUGH ONLY ONE DEFENDANT MAY BE NAMED ON EACH SUMMONS, YOU MAY PROVIDE MORE THAN ONE ADDRESS FOR A DEFENDANT.**
- 3. DO NOT COPY YOUR COMPLAINT TO ATTACH TO THE SUMMONS. THE COURT WILL DO THAT FOR YOU.**
- 4. YOU MAY SERVE ONLY DEFENDANT(S) NAMED IN THE CASE CAPTION OF THE COMPLAINT. IF YOU WANT TO SERVE ADDITIONAL DEFENDANTS, YOU MUST AMEND YOUR COMPLAINT TO ADD THE OTHERS TO THE CASE CAPTION.**

UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____ NEBRASKA

YOUR NAME GOES HERE

SUMMONS IN A CIVIL CASE

V.

CASE NO. PRINT YOUR CASE NUMBER HERE

PRINT NAME OF FIRST DEFENDANT HERE, E.G. JOHN SMITH

IF THERE ARE MULTIPLE DEFENDANTS, USE ET AL. AFTER THE FIRST DEFENDANT'S NAME, E.G. JOHN SMITH, ET AL.

TO: (Name and address of Defendant)

PRINT THE NAME OF ONE DEFENDANT HERE*

PRINT THE ADDRESS OF THAT DEFENDANT HERE**

*[NOTE: IF YOU DO NOT KNOW THE DEFENDANT'S FULL NAME, USE WHATEVER YOU DO KNOW, E.G., CORRECTIONS OFFICER SMITH... DR. SMITH... THE SMITH COMPANY... OR ANY OTHER IDENTIFYING INFORMATION.]

**[NOTE: YOU MUST GIVE AN ADDRESS; THE U.S. MARSHAL WILL NOT KNOW THE DEFENDANT'S ADDRESS. YOU MAY GIVE MORE THAN ONE ADDRESS. AN ADDRESS MAY BE A POST OFFICE BOX, A PRISON, A PLACE OF WORK, A HOME. INCLUDE CITY AND STATE.]

YOU ARE HEREBY SUMMONED AND REQUIRED TO SERVE ON PLAINTIFF'S ATTORNEY

PRINT YOUR NAME

PRINT YOUR ADDRESS

LEAVE THE REMAINING PART OF THE FORM BLANK. THE COURT WILL FILL IN THE NUMBER OF DAYS IN WHICH THE DEFENDANT MUST ANSWER, AND THE COURT WILL SIGN AND DATE THE FORM.

[w/ IR]

**INSTRUCTIONS: FORM 285 FOR PRO SE PLAINTIFFS
PROCEEDING IN FORMA PAUPERIS ("IFP")**

PLAINTIFF	COURT CASE NUMBER
Print YOUR NAME	Print your CASE NUMBER

DEFENDANT	TYPE OF PROCESS
Print the NAME OF <u>ONE</u> DEFENDANT	Print CIVIL COMPLAINT

SERVE	PRINT THE LOCATION WHERE THE ONE ABOVE-NAMED DEFENDANT MAY BE FOUND OR RECEIVES MAIL , E.G., NEBRASKA STATE PENITENTIARY, OR NAME OF COMPANY WHERE DEFENDANT WORKS
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**PRINT THE STREET ADDRESS (OR P.O. Box), CITY, STATE (AND ZIP
IF KNOWN) WHERE DEFENDANT CAN BE FOUND OR RECEIVES MAIL.**

AT **THE U.S. MARSHAL WILL NOT KNOW THE ADDRESS OF YOUR NAMED DEFENDANT.**

SEND NOTICE OF SERVICE COPY TO REQUESTOR AT NAME AND ADDRESS Print YOUR NAME AND ADDRESS here	No. of process 1
	No. of parties LEAVE BLANK
	Check for service on USA

SPECIAL INSTRUCTIONS OR OTHER INFORMATION

**PRINT ANY HELPFUL FACTS ABOUT THE NAMED DEFENDANT TO BE SERVED, SUCH AS
[GUARD] [MEDICAL DOCTOR] AT [NEBRASKA STATE PRISON] [OTHER LOCATION], OR ANY
OTHER IDENTIFYING INFORMATION.**

**YOU MAY GIVE MORE THAN ONE ADDRESS WHERE THE ABOVE-NAMED DEFENDANT MAY BE
FOUND OR RECEIVES MAIL. [YOU MAY USE MULTIPLE ADDRESSES FOR A DEFENDANT ON
FORM 285, BUT YOU MAY NOT NAME MORE THAN ONE DEFENDANT ON EACH FORM 285.]**

SIGNATURE OF ATTORNEY OR OTHER ORIGINATOR	<input checked="" type="checkbox"/> PLAINTIFF ←check this box	DATE
YOUR SIGNATURE goes here	• DEFENDANT	/ /

TELEPHONE:
LEAVE BLANK

**NOTE: DO NOT COPY YOUR COMPLAINT TO ATTACH TO THE SUMMONS. THE
COURT WILL DO THAT FOR YOU.**